



**Trillion Partners, Inc.
9208 Waterford Centre Blvd., Suite 150
Austin, Texas 78758**

June 22, 2010

Pina Portanova
USAC, Schools and Libraries Division
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Delivered via email

Federal Communications Commission
Attention: Gina Spade, Deputy Division Chief
Telecommunications Access Policy Division
445 12th Street SW
Washington, DC 20554

Delivered via Electronic Comments Filing System

RE: Response to USAC and Appeal to FCC: Farmington Municipal School District 5 letter (6/4/10)

Dear Ms. Portanova and Ms. Spade,

On behalf of the Board, investors and management team of Trillion Partners, Inc., please accept this response to the Intent to Deny Letter from USAC to Farmington Municipal School District 5 dated June 4, 2010. Additionally, please accept this letter as a simultaneous appeal to the FCC of the Intent to Deny, requesting that all of the applications referenced in such letter be approved for funding.

Due to the magnitude of the proposed denial and the substantial delay in the issuance of USAC's currently proposed intent to deny, Trillion and all of its affected customers are under a severe hardship and request expedited resolution of this matter.

Trillion Partners is responding to this letter because students in a rural and under-served portion of New Mexico will likely be denied crucial educational access. Trillion constructed a network in the state of New Mexico, with its customer relying on the consistent approvals by USAC in years past. The approval of this application is needed in order to continue to support these children who rely every school day on Trillion's embedded investment of this broadband asset.

During a phone conference on June 9, 2010, Mr. Scott Barash indicated that our comments would be accepted and included as part of USAC's review of the application. This must in no way be considered a delay in the FCC's immediate consideration of this urgent appeal.

Background

Farmington Municipal School District is located in the Four Corners region of New Mexico. The district consists of more than 10,000 students and 1,200 staff members and is extremely rural and underserved.

Response to Questions

Based on the documentation that has been provided to USAC, the FRNs listed above will be denied because Farmington did not provide a signed and dated contract that was signed before the Certification Postmark Date, nor a legally binding agreement that was signed and dated before the Certification Postmark Date. Farmington provided an email that was sent from Robert Emerson to Gary Gaessler (Trillion) on January 29, 2008, which is before the Certification Postmark Date. However, this email does not constitute a contract or legally binding agreement. Moreover, documentation that you provided to USAC indicates that Farmington and its outside counsel, and Trillion negotiated the terms and conditions of the contract throughout the Spring and Summer of 2008, with the final agreement not being approved by the Farmington School Board until August 14, 2008. FCC rules require that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services." 47 C.F.R. sec. 54.504(c). The instructions for the FCC Form 471 state that the applicant must have a signed contract of a legally binding agreement with the service provider for all services ordered on the FCC Form 471.

Regarding the contract signature date, the full contract was signed by Farmington Municipal School District and Trillion on January 29, 2008. See the attached faxed signature pages showing the full execution of the contract on January 29, 2008 by the Assistant Superintendent for Farmington Municipal School District. It appears that either USAC had not received the attached contract signature pages, or the e-mail referred to did not mention the fact that the parties had faxed the fully executed agreement.

The discussions, negotiations, and later school board approval referenced above were regarding an Amendment to the fully executed Agreement that reduced the total number of WAN sites and associated costs. The Amendment was signed on September 3, 2008. Such amendments are fully allowed under New Mexico law (See 2009 NMSA 1978, 13-1-41 and 13-1-42), as well as established common law.

Based on our review of documentation provided by Trillion and yourself, it appears that Charles Thacker, CTO at Farmington asked Trillion in December 2006, a month prior to the posting of the Form 470, for a network concept and provided a map and GPS survey points of the schools and current cost information to Trillion. See attached pdf (Farmington Dec Jan emails.pdf) Please describe the information that Trillion provided in response and explain Trillion's role in the preparation of your Form 470, including the description of services provided. Did you also share the same information with all other potential bidders so that they would have the same extended period of time to respond to your bid?

The data provided by Farmington as described above is all publicly available information, including school addresses (publicly available from school district's website <http://district.fms.k12.nm.us/schools>), GPS coordinates (publicly available from Google Earth), elevations (publicly available from Google

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Earth), and cost data (publicly available from USAC's website).

Our records show that Trillion did not provide a response to Mr. Thacker's request for a network concept. However, if Trillion were to have provided any such response it would have been in the form of permissible routine marketing materials and product offering information per USAC guidance. For further clarification on this point please see the attached letter to Scott Barash dated June 17, 2010.

Trillion had no role whatsoever in the preparation of Farmington's Form 470 # 460150000618622 with a posting date of 1/10/07. Furthermore, Trillion did not win this bid as is evident on USAC's website. The Form 471 # for this application is 581479 and the winning vendors associated with this application were Qwest, Alltel, Apple Computers, and Zianet.

In Robert Emerson's June 18, 2009 response to our request for information concerning Trillion Partners, he indicated that no meals, entertainment, trips or gifts were offered to the district. However, Trillion Partners, Inc. has provided documentation showing that in 2007 Farmington representatives received meals totaling \$111.66. Please explain the discrepancy in your response and the documentation Trillion has provided and provide information, to the best of your knowledge, as to who attended the meal indicated on the attached pdf (Farmington expenses.pdf) indicated as Reference # 66 on 4/11/2007.

This expense on April 11, 2007 labeled #66 was, in fact, for two Trillion employees only and no school district employees were present. This was an error in reporting by Trillion. In an effort to be fully transparent, it has been our practice to err on the side of a more conservative interpretation of the documents available.

The facts provided in the letter from USAC list events that, in each instance, are in full compliance with state and local procurement laws and regulations. As has been provided in a letter to Scott Barash of USAC dated June 8, 2010, Trillion has already described how the FCC guidelines regarding meals, gifts and gratuities are based on state and local procurement rules, not a separate federal standard. Also as we previously outlined, Trillion is aware of the Notice of Proposed Rulemaking dated May 20, 2010, soliciting public comment on a potential rule which would extend current rules for Executive Branch employees to employees of governmental entities that participate in the E-Rate program. As of this writing, not only has this new proposed rule not yet been approved, it is definitely not being proposed to apply retroactively. This means that this proposed rule did not and will not apply to the facts you describe to form the basis for the proposed denial. Furthermore, Trillion currently operates under a strict Code of Conduct which would fully comply with the FCC's proposed guideline. In all instances, the facts you describe regarding Trillion did not affect the competitive bidding process and were in full compliance with all applicable competitive bidding and procurement requirements.

The amounts spent on meals or other routine business expenses were trivial and could not have possibly influenced a decision that would ultimately be made by the School Board. Furthermore, no member of the School Board received any such expense. The fact is, Trillion invested \$464,034 in capital to construct a network providing critical services with a total contract value of \$991,860, while the amount of the routine business meals and expenses only amounted to \$90 and never went to any individual with decision making authority.

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In summary, Trillion's actions were in full compliance with state and local procurement guidelines in effect at the time. The currently proposed FCC rule on gifts and gratuities has not been approved and is not proposed to apply retroactively to the time period in question. The amounts of the routine business meals and expenses were trivial and were never given to decision makers. Therefore, this customer's actions did not, in any way whatsoever, improperly affect the competitive bidding process.

Trillion respectfully requests that this application not be denied based on this issue.

Sincerely,

Trillion Partners, Inc.

Attachments:

- Trillion Account Summary and Review June 8, 2009 – Farmington Municipal School District 5
- Letter to Mr. Scott Barash dated June 8, 2010
- Letter to Mr. Scott Barash dated June 17, 2010
- January 29, 2008 Services Agreement Signature Pages - FAXED

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Trillion Account Summary and Review

Customer Information

Name FARMINGTON MUNCPL SCH DIST 5
Address PO Box 5850, Farmington, NM, 87499
Billed Entity # (BEN) 143265
Lead Sales Representative Gary Gaessler
Customer of:
(Direct Sales Communications) Gary Gaessler Yes Roger Clague Yes Steve Davis No
Trillion/E-Rate Consultant None
Communication
Customer Status Active Customer

Contract Information

ContractNumber	Award Date	End Date	470 Number	470 Date	FRN Number	471 Number
SA-122407-000941	01/29/08	06/30/13	642540000653382	12/21/07	1718546	622546
SA-122407-000941	01/29/08	06/30/13	642540000653382	12/21/07	1872954	684756

Extensions/Renewals/Upgrades

ContractNumber	Award Date	End Date	470 Number	470 Date	FRN Number	471 Number
None						

Expense Summary

Governing State New Mexico
Business Meals In compliance with state guidelines.
Gifts & Entertainment None

Customer Communications

Communications Provided **Begin Date** 12/11/2002 **End Date** 1/29/2008
Customer Communications Summary Typical customer communications

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An Intel Capital funded company

June 8th, 2010

Mr. Scott Barash
Chief Executive Officer
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

Dear Scott,

On behalf of the Board, investors and management team of Trillion, I want to send a sincere thanks for applying additional resources to Trillion's applicants. Yet, as communicated via emails and phone calls from Ron Reich of Intel, Trillion Partners has reached a point of insolvency and imminent bankruptcy given an extended lack of funding under the E-Rate program. As referenced in the letters to the E-Rate Executive Director last January, and last month to Chairman Genachowski, Trillion has undergone enormous strain and on-going financial damages due to multi-year delays in processing in excess of \$17M in applications. USAC committed to process a minimum of 50 applications by yesterday, the 7th of June. Trillion is now aware of disposition on some of the 50 promised applications, which in some cases stretch back to 2006.

Trillion is now aware that USAC recently sent letters to at least 13 Trillion customers over the last few days, indicating intention to deny their applications. This letter details the overarching policy context and cites reasons in specific cases as to why applications in this group of 13 have been incorrectly processed after very lengthy delays. This letter is a final appeal to hopefully prevent an avoidable and catastrophic series of service disruptions. We strongly believe that a "fair and open competitive process" was not impaired by a conflict of interest, and that the regulations and rules have been misapplied and the facts misinterpreted in each of these applications. We urge that USAC immediately reconsider these specific applications and approve them for funding. If these actions are not corrected immediately, the company does not expect to have funds on Monday June 14th to make its payroll obligation and to make payment on long overdue obligations to circuit suppliers. We expect the to be forced to close its doors and to discontinue service to over 600,000 students and 22,000 school administrators. The market will be left with one less competent service provider in direct conflict with the FCC's goal of promoting a competitive environment to deliver the best broadband services to schools at the lowest cost.

Trillion has endeavored, based upon years of USAC guidance and training, to make sure that its approach is consistent with state, local and FCC procurement rules. Trillion believes that the data provided by Trillion to USAC supports this. However, it appears that USAC is basing potential denials on rules that have never been formally adopted or interpretations of data that are not consistent with the facts as provided in the documentation by the company. We are alarmed that USAC is applying potential rules retroactively to applications as far back as 2004. The results of these practices are seemingly to single out Trillion in a manner that if applied universally across all service providers would result in denial of the majority of all applications put forth for E-Rate funding to USAC.

Based upon the 13 letters received thus far, the following are policies that have been incorrectly applied.

- Gifts and other expenses that are allowable
- Consortium member approval prior to bid
- 470 related communications by a vendor
- Communications allowable by an incumbent vendor with its customer

Below we provide factual evidence that clears any suspicion of conflicts of interest or other issues that may have prevented a fair and open competitive process on the example application under review. We believe that for each and every of the 13 applications in question, that the facts support the same strict and clear compliance with all rules communicated by USAC. Each of these applications must be swiftly approved so that further misapplication of rules and unjust financial damage to company can stop immediately. For example, Trillion was recently provided a letter from USAC dated June 3, 2010 to a Trillion customer, Houston County Board of Education, that threatens denial of their E-Rate application. In this letter, the applicant, Houston County Board of Education, is told that its application for E-Rate funding will be denied in full due to a \$26 meal provided by the school district's incumbent service provider, Trillion. The letter solely points to this meal as reason for impending denial.

"Based on the documentation that you or Trillion Partners, Inc. have provided, the entire amount of FRNs 1786841, 1786824, and 1809620 will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you or Trillion provided indicates that you were offered and accepted valuable gifts, in the form of a meal, immediately prior to the process you conducted to select a service to provide these goods and services from the service provider you selected. This gift shows that you engaged in non-competitive bidding practices in violation of program rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

The gift was in the form of a meal at Pig Out BBQ 1 on January 6, 2009 in the amount of \$26.34."

This letter raises many concerns. The reviewer is basing this pending denial on several inaccuracies. As an example, FRN's 1786841 and 1786824 are continuation requests of a contract that was signed in January of 2008, a full twelve months before this meal was provided. The school district has been a customer of Trillion's since 2006, when Trillion acquired the contract from another company. How could a \$26.34 meal to a non-decision maker influence a Superintendent and the Board of Houston County to make a decision to award a contract for \$348,804 over a three year term, when the contract award occurred a full year prior to the meal?

USAC also seems to be ignoring its own guidance regarding its policy on meal expenses. In a letter from USAC to Trillion dated April 8, 2009, where USAC expresses its concern about meals and other gifts, USAC states that the applicant must comply with "all applicable state

and local procurement laws". We have done that in this instance, as well as all others. We are happy to provide any details on specific state laws if necessary. None of USAC's training materials adequately address these issues, but we have followed any and all guidelines made available.

Trillion is also aware that in the Notice of Proposed Rulemaking dated May 20, 2010, a new rule is being proposed:

"Service providers may not offer or provide gifts, including meals, to employees or board members of the applicant"

This proposed rule is based upon 47 C.F.R. §§ 1.3001, 1.3002, which governs the "Acceptance of Unconditional Gifts, Donations and Bequests" currently in place for Executive Branch Employees, not state or local employees. Trillion fully supports the proposed rulemaking. In February of 2009 and 15 months prior to the NOPR, Trillion instituted a "Trillion Code of Conduct" that prohibits Trillion employees from providing gifts of any form to any governmental employee. We believe that all vendors should be held to the same standard to which Trillion has been holding its employees for over a year. However, it is neither legal nor fair to apply this proposed rule to applicants retroactively.

It is our experience that the occasional provision of meals and entertainment is the industry standard practice engaged in by the majority of service providers. Ex post facto application of new rules to Trillion would raise questions re the legitimacy of many other service providers.

In addition to our concern that the law is being misapplied to Trillion, we have learned that a USAC employee told a Trillion customer that it would be better served by canceling the school district's funding request for Trillion services. An excerpt from this letter Trillion had received cancelling our contract to provide services is as follows:

"In conversations with USAC, we have been informed that these funding requests will be expedited if the request for E-Rate funding for Trillion services is cancelled."

This letter raises serious concerns about the fairness of the USAC review.

Consistent with USAC's corporate charter to "ensure that schools and libraries have access to affordable telecommunications and information services," this situation needs immediate correction. E-Rate funding for prior years should not be denied to applicants on the basis of retroactive application of proposed rules, misapplication of the facts or unduly burdensome audit practices. We are confident that a rigorous evaluation of the law and the facts will vindicate Trillion. However, time is of the essence. Unless these clear errors are not expeditiously corrected, we expect imminent loss of control of our company and the systems serving 600,000 students and 22,000 administrators and teachers in primarily rural and underserved areas will go dark.

Sincerely,

Trillion Partners, Inc.

June 17, 2010

Mr. Scott Barash
Chief Executive Officer
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

Dear Scott,

Thank you very much for the time you and your staff spent with us on the phone last Wednesday. Also, thank you as well for the resources you have allocated to complete the processing of the E-Rate applications for Trillion's customers. Although it appears progress has been made, as we discussed on the phone, USAC appears to have misapplied its own rules and misconstrued or ignored relevant factual information in connection with a large number of these applications. Trillion is on the verge of insolvency and time is of the essence, and therefore we are asking you to reconsider these applications.

Of the 50 applications that USAC reviewed on or prior to June 7, 2010, a full two-thirds (33 applicants) received a letter either indicating an intent to deny or seeking clarifications and that in some form threatened denial. This represents an extraordinarily high ratio of applicants who supposedly did not follow the rules, and is starkly inconsistent with Trillion's historical application approval rate and the results of USAC's comprehensive review of Trillion's customers in 2006.

There appear to be several common themes underlying USAC's preliminary determinations to deny these E-Rate applications. The first theme concerns allowable gifts, gratuities and meals that can be provided to an applicant by a service provider. We discussed this issue in our phone call, where you indicated that a school district must follow state and local procurement rules to be compliant, and acknowledged that the proposed rule put forth in the NOPR dated May 20, 2010 applying a more stringent set of rules around gifts, gratuities and meals has not yet been adopted. Therefore, we believe that all of the letters sent by USAC threatening denial for meals, gifts and gratuities that were within state and local guidelines should be rescinded and the subject applications approved. To do otherwise would have the effect of contradicting USAC's published guidance and retroactively applying a not-yet-adopted new standard in a discriminatory fashion to conduct that was fully compliant at the time. Please refer to our letter of June 8, 2010 for further detail on this issue.

This letter is intended to address the other common themes underlying USAC's prospective denials that we did not have an opportunity to discuss on the phone, which relate to:


- 1) Allowable Form 470-related communications allowable by a vendor

- 2) Allowable communications prior to a Form 470 being posted
- 3) Allowable communications by an incumbent vendor

As demonstrated below, it appears that USAC has not followed its own guidance, has misapplied rules and/or has misinterpreted facts related to these types of communications in connection with these applications.

1) Allowable Form 470-related communications

The following excerpts from USAC training materials published between 2007 and 2010 set out clear rules governing Form 470-related communications between an applicant and a vendor:




Competitive Bidding

- Tips
 - If applicants ask you for assistance:
 - Refer them to existing sources
 - Review all requirements set out by the applicant and follow them
 - Keep records of bids submitted
 - Keep copies of contracts

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www.usac.org

Source: USAC - Overview from the Service Provider Perspective - John Noran - Service Provider Training Schools and Libraries Division - April 18, 2007 – Atlanta • April 25, 2007 – Chicago



Training for Applicants

- You can provide training to applicants on E-rate if your training does not give an unfair advantage
 - Your training can include neutral information, including references to USAC, state, and public websites and training materials
 - Ask yourself if the content of the same training provided by a competitor would concern you

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www.usac.org

Source: USAC - What To Do and How To Do It - Mel Blackwell and John Noran - Service Provider Training Schools and Libraries Division - May 8, 2008 – Miami • May 14, 2008 – Salt Lake City

Pre-bidding Discussions

- Service providers may:
 - Discuss their product offering with applicants
 - Educate applicants about new technologies
- Service providers may **NOT**:
 - Offer/provide vendor-specific language for RFP or the Form 470
 - Provide template RFPs or Forms 470
 - Offer/provide assistance with Tech Plan
 - Offer/provide assistance with RFP

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www.usac.org

Source: USAC - Program Compliance for Service Providers - Catriona Ayer - Schools and Libraries Division - May 4, 2010
– Los Angeles • May 11, 2010 – Tampa

Competitive Bidding

- What is a service provider's role in the competitive bidding process?
 - Review posted Forms 470 and/or download Form 470 summary information
 - Respond to Forms 470/RFPs
 - Review applicant requirements and local and state procurement rules, including reasons for possible bid disqualification

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www.usac.org

Source: USAC- Beginners Session for Service Providers - John Noran - Service Provider Training
Schools and Libraries Division - May 4, 2010 – Los Angeles • May 11, 2010 – Tampa



Requirements - Competitive Bidding

- The applicant must conduct a fair and open competitive bidding process
 - All bidders are treated the same
 - All bidders have equal access to information
 - All bidders know what is required of them
 - All bidders know any reasons for disqualification

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Source: USAC - Application Process - Schools and Libraries Division - Washington, DC • Seattle • Denver • Chicago • Newark • Los Angeles • Atlanta September/October 2008

To summarize this guidance, a service provider may not assist an applicant in the completion of a Form 470 or offer or provide vendor-specific language for a Form 470. A service provider may offer E-Rate education if the training is neutral in nature and does not provide an unfair advantage to the service provider. If asked for assistance by the applicant in completing a Form 470, the vendor should refer the applicant to existing resources. Once the Form 470 is filed, vendors are allowed to review the form, evaluate its requirements and ask clarifying questions so long as the answers provided by the applicant are available to all potential bidders.

As described in detail in our prior letters to Mel Blackwell of USAC dated April 17, 2009 and June 8, 2009, Trillion employees have been trained extensively regarding these requirements. Trillion has a long-standing policy requiring its employees to direct all E-Rate questions from an applicant to the company's internal E-Rate attorney or E-Rate specialist, who in turn have procedures in place to direct applicants directly to the USAC website for assistance.

Despite its published guidance, it appears that USAC has taken the position that virtually any communication between a vendor and applicant regarding a Form 470 is a basis for denial. An example of this is the letter received from USAC by St. Louis County Library dated June 2, 2010, which alleges that Trillion provided improper assistance to the applicant.

St. Louis County Library posted its Form 470 on August 29, 2008. The first communication between Trillion and the applicant, which occurred after the posting on or about September 8, 2008, is as follows:

"Dear Mr. Fejedelem ,
>

> I am contacting you to request a copy of the RFP referenced on the 470
> Application # 738980000679314 recently filed by St Louis County Library.
>
> Can you please forward me a copy of the RFP?
>
> Trillion is the leading provider of Broadband WAN and Voice over IP services for K-12 education.
>
> In addition to WAN services, Trillion offers a VoIP service that is Priority 1 E-Rate eligible and is enabling K-12's to enhance safety and communication in their schools with no install costs, money down, equipment purchases or maintenance fees.
>
> After reviewing the RFP, I would appreciate the opportunity to speak with you for a few minutes by phone to better understand the Broadband and IP Telephony needs for the your school district.
>
> Thank you very much,
>
> ** Jeanne Massey **
>
> * Trillion Partners, Inc. *
>

In support of its preliminary determination, USAC cites the following e-mail exchange:

"9/24/2008 1:45PM

Jake,

Just a couple of questions...

- 1) You have a total of 325 phones. Does the distribution matter, or do you want them to spread evenly across the 20 sites? Same question for the 25 extra voice mail boxes.
- 2) Are you going to want/need to keep all of the other ports (fax lines, data, TDD, etc) that are listed in the RFP?
- 3) Any idea what types of phones and in what quantities you will want at each site (basic users, mid-level admins, high-end execs)?

I think this is all I need. Thanks.

John

9/24/2008 3:07PM

Jake,

One other thing that we just discovered... you did not check the box seeking a multi-year contract (7b) on your 470. Was that intentional or an oversight?

John Masterson

9/25/2008 9:17AM

John,

Multi-year contract was an oversight. We would be seeking a multi-year deal.

Enclosed is the telephone breakdown list (the number of jacks we have at each location).

Most sites will have basic user phones (cordless if possible). For high level execs, call forwarding to cell device is of far more importance than the type of desk phone.

-Jake

10/2/2008 3:04PM

Jake,

Would you please call me at your earliest convenience 913-269-7174. I want to make sure we're on the same page regarding your new 470. Thanks!

John"

As USAC indicates, the only difference (other than the due date) between the original Form 470 and the new Form 470 posted on October 13, 2008 was that the multi-year box was checked.

The salient facts related to this application, as demonstrated by the communications set forth above, are as follows:

- Trillion was not in contact with this prospect prior to the posting of its original Form 470
- Trillion asked for the RFP via e-mail after the original Form 470 was posted.
- Trillion asked clarifying questions in order to better understand the service requirements (such as phone count by site) and asked whether the applicant was actually seeking a one-year term
- The applicant discovered its mistake and corrected the error by filing a new Form 470
- The RFP requirements and services requested were unchanged in the new Form 470
- Trillion had no agreement or understanding with the applicant of any kind

With this set of facts, Trillion is unsure as to how the USAC reviewer came to the following conclusion:

"These e-mail exchanges suggest that it was pre-determined that St. Louis County Library would enter into a new contract with Trillion prior to the Form 470 being posted and prior to the 28 day competitive bidding

window. It also suggests that Trillion was intimately involved in developing the specifications the library would seek on its Form 470 and perhaps was involved in the drafting of the language to be used in the Form 470.”

There is simply no basis for a conclusion that a contract was predetermined as a result of Trillion’s routine communications. Trillion could not have been involved in the development of the project specifications because those specifications were in the RFP which Trillion received only after the original Form 470 was posted and those specifications did not change from original to final Form 470 posting. It is obvious that Trillion’s clarifying questions led the applicant to discover an error in its original Form 470 that was subsequently corrected. These communications speak for themselves and do not support any reasonable interpretation to the contrary.


The St. Louis County letter is just an example of the flawed logic employed in a number of “intent to deny” letters based on Form 470-related communications with Trillion customers where:

- The reviewer incorrectly interpreted the proper chronology
- The decision is inconsistent with USAC rules and guidance
- The “facts” relied upon by USAC are incorrect
- The wording in the filed Form 470 uses language directly from USAC’s Eligible Services List
- The services requested are clearly open to many bidders

We urge USAC to revisit these applications with a view to applying a consistent and understandable standard that is consistent with its published guidance.

2) Allowable communications prior to Form 470 posting

With regard to marketing, product demonstrations and similar communications with a prospective applicant prior to the posting of a Form 470, USAC has offered the following guidance:




DO's

- Provide information to applicants about products or services – including demonstrations – before the applicant posts the Form 470
 - You can provide information on your available products and services before applicants file a Form 470
 - Once the Form 470 has been filed, you are limited to the role of bidder

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www.usac.org

Source: USAC - Service Provider DO's and DON'Ts - Mel Blackwell and John Noran - Service Provider Training Schools and Libraries Division - April 18, 2007 – Atlanta • April 25, 2007 – Chicago




Training for Applicants

- You can provide information to applicants about products or services – including demonstrations – before the applicant posts the Form 470
- Once the Form 470 has been filed, you are limited to the role of bidder

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www.usac.org

Source: USAC - What To Do and How To Do It - Mel Blackwell and John Noran - Service Provider Training Schools and Libraries Division - May 8, 2008 – Miami • May 14, 2008 – Salt Lake City



Pre-bidding Discussions

- Applicants may:
 - Discuss their product offering with SPs
 - Learn about new technologies from SPs
- Applicants may **NOT** accept/use the following from service providers:
 - Vendor-specific language for RFP or the 470
 - Template RFPs or Forms 470
 - Assistance with tech plan
 - Assistance with RFP

4 www.usac.org

Source: USAC - Program Compliance - Helping You Succeed Schools and Libraries Division - Washington, DC • Newark • Atlanta • Chicago • Orlando • Los Angeles • Portland • Houston - September/October 2009



Pre-bidding Discussions

- Service providers may:
 - Discuss their product offering with applicants
 - Educate applicants about new technologies
- Service providers may **NOT**:
 - Offer/provide vendor-specific language for RFP or the Form 470
 - Provide template RFPs or Forms 470
 - Offer/provide assistance with Tech Plan
 - Offer/provide assistance with RFP

4 www.usac.org

Source: USAC - Program Compliance for Service Providers - Catriona Ayer - Schools and Libraries Division - May 4, 2010
– Los Angeles • May 11, 2010 – Tampa

To summarize this guidance, prior to the posting of a Form 470, a vendor is allowed to provide general information regarding the vendor's products and services, discuss and answer questions regarding its product offering¹, and provide product demonstrations², including an illustration or visual representation

¹ American Marketing Association definition: *A bundle of attributes (features, functions, benefits, and uses) capable of exchange or use; usually a mix of tangible and intangible forms. The terms and conditions (price, quantity, delivery date, shipping costs, guarantee, etc.) under which a product or service is presented to potential customers*

Blue Mine Group definition: *Product Offering has 5 key elements which include the product definition, customer experience, product pricing, collaboration, and differentiation.*
http://www.blueminegroup.com/articles/1_winning_product_offering_020810.php

² American Marketing Association definition: *An aspect of the sales presentation that provides a sensory appeal to show how the product works and what benefits it offers to the customer*

of how a prospective applicant's network might be configured as well as generic pricing and other indicative terms.

In many instances, however, USAC has used permissible pre-Form 470 communications as the basis for potential denial of applications filed by Trillion's customers. An illustrative example is the letter to Nogales Unified School District 1 dated June 9, 2010. This letter states:

"Correspondence provided by you shows that there were several discussions beginning January 2006 which predate the filing of the Fund Year 2008 Form 470 used to establish a new contract with Trillion. The Form 470 used to establish this contract with Trillion was posted October 26, 2007. The correspondence that predates that Form 470 shows that discussions took place between Trillion, yourself, and other members of your entity or state entity. These discussions included, among other things, the following:

- *Meetings occurred discussing possible WAN options Trillion can offer- January and February 2006*
- *Trillion providing a design and preliminary price estimate- February 2006 and April 2007*
- *Discussions to follow-up on the preliminary estimate provided by Trillion –June 28, 2007*
- *Meetings with Trillion Sales representatives- August 2007*
- *Meetings to discuss funding - September 2007*

A copy of these email exchanges are attached for your review. These email exchanges suggest it was pre-determined NOGALES UNIFIED SCHOOL DIST 1 would enter into a new contract with Trillion prior to the Form 470 being posted and prior to the 28 competitive bidding window. It also suggests Trillion was intimately involved in developing the specifications you would seek on your Form 470."

The reviewer fails to mention that, on January 12, 2006, Nogales School district posted a Form 470 (# 884590000574746) for the services that Trillion offers. The reviewer also fails to mention that Trillion's first contact with Nogales was after the Form 470 was posted. Therefore, Trillion had every right to act as a bidder, provide a proposal and clarify its proposal as the e-mail record suggests. It should be noted that Trillion did not win this bid.

During the one-year period from June of 2006 until the end of June 2007, Trillion met with the school district a total of five times, none of which occurred during a bid cycle. Trillion provided product offering information to a prospective customer

as well as a preliminary design and price estimate. Keep in mind that Trillion participated in a previous bid cycle that Trillion did not win and had information from this bid cycle on which to base its estimate. USAC guidance establishes that Trillion has the right to discuss its product offering with a prospective applicant, and the chronology identified by USAC merely confirms that these permissible discussions occurred.

It is standard industry practice to provide product quotations to potential customers. In the normal course of business, school districts across the country ask for budgetary information and service providers routinely respond to these requests. Sometimes a price quotation is in the form of a tariff and other times in the form of a budgetary estimate, all of which are well within the definition of “product offering information.”

There is no data whatsoever indicating that a contract was “pre-determined” for Trillion. Keep in mind that the applicant’s Form 470 requested *“Digital Transmission Services - Wireless or Fiber Optic based: Leased Wireless or Fiber Optic Based WAN for eleven campuses including District Office Hub”*. At the time of this bid cycle, Trillion only offered Wireless WAN and did not offer Fiber WAN services. If the outcome was pre-determined for Trillion, presumably the applicant would have requested wireless WAN services only. To the contrary, publicly available data shows that there were multiple bidders for this project that included both wireless and fiber providers.

The summary of the facts are as follows:

- Trillions first communication occurs after the applicant files a Form 470, and Trillion is not selected on that bid
- Trillion met with the school district several times over an almost two year period to discuss its product offering, all of which is allowable under USAC rules
- There are no USAC rules which limit the number of times a service provider can meet with an applicant.
- No communication whatsoever over that two-year period indicates a contract is pre-determined
- Trillion does present a pre-design and budgetary estimate, which is allowable under USAC rules
- There is no communication at all between the parties regarding any Form 470 posting
- The Form 470 posting is fair and open and is inclusive of competitive services that Trillion could not provide

With this set of facts, we cannot see how the reviewer could have possibly come to the conclusion that a decision was pre-determined and that Trillion provided impermissible guidance on the applicant’s Form 470. It is clear that, in this case and in other similar cases, USAC has drawn the incorrect and unwarranted

conclusion that routine contact with a potential applicant is a basis for denial in direct contravention of its own guidance.

3) Allowable communications by an incumbent vendor

Although this theme is very similar to the prior theme and is governed by the same set of rules, there is a fundamental difference in the relationship between an applicant and an incumbent provider in that the incumbent provider will necessarily have numerous communications with the applicant regarding the existing services provided and is the logical provider of choice when the applicant seek service additions or upgrades. As a practical matter, a new vendor will often be precluded from providing service additions upgrades due to technical problems and other inefficiencies associated with having multiple service providers on the same project. This problem arises in many scenarios, including MPLS WAN networks, large-scale layer 3 WAN networks, and interconnection VOIP expansion.

In the case of an MPLS network, if an applicant wanted to add a site or increase bandwidth to only a portion of the network, only the incumbent can offer this solution. The primary reasons are the technical limitations of an MPLS network. In an MPLS WAN, if any changes are going to occur to that network, no other alternative service provider's network will actually work with the incumbent's network. Therefore, without a wholesale change to the entire network, bandwidth upgrades to individual sites, as well as site additions to the network, can only be done by the incumbent MPLS provider. Significant issues with an alternative provider would come into play, such as the requirement for duplicative equipment and software, loss of network security and quality of service, the need to hand off traffic between providers and the requirement for "out of band" internet monitoring.

Similar issues arise with large-scale layer 3 WAN networks. If there is a network covering a large area serving multiple locations with network-wide routing, there is really no technical difference between this type of network and an MPLS network. Therefore, if an applicant were seeking bandwidth upgrades to a portion of the network, or if new sites were to be added, the only viable provider is the incumbent. For interconnected VoIP expansion, there are similar technical issues. Where an incumbent is providing phone service to the administrative offices, if an applicant seeks to add phone connections to the classrooms, it is technically impossible for another service provider to solve this integration, since having multiple providers would require management of two completely disparate systems with duplicative reporting and a loss of control between the systems. Therefore, if an applicant files a Form 470 for additional connections to have phones in every classroom, the bid is technically limited to the incumbent unless there is a wholesale change of the entire phone system.

In any of the three scenarios, due to the technical limitations and impracticalities,

the applicant must rely on the incumbent provider. Keep in mind that the incumbent provider by definition has critical knowledge that alternative providers do not. An incumbent can see the applicant's network statistics, how much bandwidth is being utilized, where the bottlenecks are, and what can be done to improve performance. If an incumbent service provider realizes that a portion of a network is running to capacity, there is every reason to inform the applicant of this fact. No guidance is provided by USAC in this case, but it would seem to be in the best interest of the applicant for the service provider to provide this useful information.

USAC fails to recognize the practical realities of the incumbent provider scenario. An illustrative example is a letter from USAC received by Northeast Texas Regional Education Telecommunications Network (NTRETN) dated June 4, 2010. In this letter, USAC indicates its intent to deny the application because NTRETN engaged in numerous discussions with Trillion employees beginning in 2004 through the award of multiple contracts. USAC claims that these discussions were not general marketing discussions, and further claims that Trillion was provided inside information with regard to the applicant's needs.

In order to put USAC's claims in context, it is important to provide some background regarding NTRETN and the services Trillion provides to it. NTRETN is a consortium of school districts located in Texas' Region 8 Education Service Center (ESC). The Region 8 ESC is one of 20 education service centers in Texas. The vision of Region 8 is "to develop a district-wide systemic culture to sustain a high-performing learning community." To achieve this vision, Region 8 delivers a variety of services, including distance learning, to each school district it serves. To provide these services, the NTRETN consortium was established to deliver a sustainable wide area network (WAN) in rural Northeast Texas to serve the schools in the Region 8 ESC area. NTRETN consists of 51 school districts in northeast Texas, including 150 campuses, with over 150,000 students. The majority of its member school districts are located in rural communities. NTRETN has an elected board of directors consisting of 12 school district superintendents and the Region 8 ESC Executive Director.

Trillion provides a customized network for NTRETN that links together school districts across a large, rural portion of Texas. The project to build the NTRETN was massive in scope because the network was required to cover over 9,000 square miles of geographic terrain. Trillion's network for NTRETN services 88 locations, 652 route miles (covering 9,000 square miles), and has three connections, or points of presence (POPs), out to the Internet.

To date, the implementation of this network has involved an investment of \$5,865,597 in capital expenditures. It has required heavy construction in school yards, coordination of utility services, adherence to strict safety guidelines, management of network addressing and protocols and much more. In fact, the project was so large and complex that it had to be built in two technically distinct

phases over the course of 19 months. Given the project's scope, it required a tremendous amount of interaction and coordination among Trillion's employees and the NTRETN team.

USAC does not take into account that a project of this magnitude requires constant communication between the parties in order to be successful, which type of communication is in accordance with USAC guidelines. USAC also does not take into account the fact that it is nearly impossible from a technical standpoint for another service provider to provide bandwidth upgrades to a portion of this comprehensively routed and managed IP network without a complete replacement of the entire network.

In regards to the communication record, in the original build of NTRETN's network, not all of the NTRETN member school districts were connected to the network. The neighboring consortium, Region 10, also had not provided adequate Internet and WAN services to its member school districts. As a result, NTRETN had received inquiries from neighboring school districts regarding the technical feasibility of adding schools to the then-existing network. There is also mention in the e-mails of the need for additional bandwidth and NTRETN's interest in an assessment of the technical feasibility of adding a 3rd POP in Texarkana. NTRETN wanted to understand whether Trillion could expand the existing network to accommodate the additional school districts, including Region 10 schools, and whether this additional usage would negatively impact the existing network.

These inquiries are analogous to inquiries that a school district might make of its incumbent communications provider to assess whether a T-1 could be provided to connect to an additional site that is not served, whether additional capacity could be added to an existing MPLS circuit, or whether an additional T-1 of Internet capacity could be added to a currently-served site. Discussing the technical feasibility and impact of adding a T-1 to a site does not run afoul of a fair and open bidding process, and nor does discussing the feasibility and impact of adding an additional site to an existing network. These type of questions are commonplace in the industry and are part of a normal dialogue between an applicant and its existing service provider. To require otherwise would be highly inefficient and counter-productive.

The relevant facts with respect to NTRETN are as follows:

- The NTRETN network is massive, covering 9,000 square miles
- The school districts served are generally very rural
- Over \$5,000,000 in capital has been invested in the network
- An applicant is allowed to ask the technical feasibility of network upgrades
- The communication record shows normal discussions between an applicant and an incumbent who provides such a complex network
- There are technical limitations on the ability of another service provider to

connect to a single site or upgrade only segments of the network without complete replacement of the entire network

With this set of facts, we do not see how the reviewer can come to the conclusion that anything but normal course discussions took place between an applicant and their incumbent service provider. Denial is particularly unwarranted in cases of this type since the result would be to force the applicant to make an economically inefficient choice of an alternate provider or to forego the requested services entirely.

Summary

Trillion understands that setting a deadline can force hasty, premature decisions. The preliminary determinations of USAC to deny Trillion's customer applications cannot withstand even casual scrutiny as they contravene USAC's own guidance and are based on numerous factual errors. These determinations are clearly motivated by a desire to "move the pile" rather than an effort to get at the real facts and to fulfill the purposes of the E-Rate program.

Unfortunately, we are now out of time. While these errors can conceivably be remedied on appeal, our company will likely not be alive to see the end of that process. The sad part is that the ones really being hurt in this process are the students of the rural and underserved areas of this country that Trillion serves. Don't let these kids be without the technology that keeps them on the same playing field as the urban kids. We urge you to direct your staff to withdraw these ill-considered "intent to deny" letters and to make thoughtful determinations on the merits of these cases.

Sincerely,

Trillion Partners, Inc.

TRILLION PARTNERS, INC. SERVICES AGREEMENT



Contract No.: SA-122407-000941

been sent by registered or certified mail, return receipt requested, postage prepaid; or (4) one (1) day after deposit with a commercial overnight carrier, with written verification of such receipt. Notices, written consents, and payments will be sent to the parties at the addresses set forth in the signature block below or such other address as either party may specify in writing to the other.

- 8.8 **Conflicting Terms; Survival.** If there is a conflict among the terms in this Agreement and any Product Addendum attached hereto or any subsequent amendment to this Agreement, the terms of the later Product Addendum or amendment shall control. Customer's obligations under this Agreement shall commence on the date this Agreement is signed by Customer below, with the sole and limited exception that Customer's obligation to begin payment under this Agreement shall begin on the date the Customer executes an acceptance certificate applicable to the Services specified in the applicable Product Addendum. If there are multiple stages of acceptance for a given Product Addendum, Customer shall promptly pay its pro-rated share for the accepted Services as invoiced by Trillion. Independent of this obligation to pay, if there are multiple stages of acceptance for a given Product Addendum, the latest date of acceptance shall be the Commencement Date. The terms of any sections which by their nature are intended to extend beyond termination will survive termination of this Agreement for any reason.
- 8.9 **No Waiver; Severability; Section Headings.** The failure of a party to exercise or enforce any right or provision of the Agreement will not constitute a waiver of such right or provision. Nothing in this Agreement shall be construed in a manner which would result in a violation of any local, state, or federal laws or regulations, and any provision found by a court of competent jurisdiction to be in violation of such law or regulation shall be considered deleted and the remainder of the Agreement shall be construed, as nearly as possible, to reflect the lawful intentions of the parties with the other provisions remaining in full force and effect. The section headings in the Agreement and Summary section in any Product Addendum are solely for the convenience of the parties and have no legal or contractual effect, except to the extent described in Section 1.8.
- 8.10 **Entire Agreement.** This Agreement, including each Product Addendum attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement does not affect, and is independent of, any previous agreement between the parties regarding the provision of Services not contemplated in this Agreement or applicable Product Addendum. Any previous agreement between the parties regarding the provision of Services contemplated in this Agreement or applicable Product Addendum shall continue in full force and effect, and shall be renewed on a month to month basis until the Commencement Date of this Agreement. No modification or waiver of any provision hereof will be effective unless made in writing and signed by both parties. Any attempted E-Rate SPIN change during the Term without the express prior written authorization of Trillion shall be void. This Agreement may be executed in two or more counterparts, each of which will be deemed an original for all purposes, and together will constitute one and the same document. Faxed signatures will be relied upon as original signatures in all respects, however, Trillion requires Customer to sign and return two originals.

TRILLION PARTNERS, INC.

"TRILLION"

9208 Waterford Centre Blvd., Suite 150
Austin, TX 78758

By: [Signature]Print Name: TERRELL A. POTUTitle: PRESIDENT & CEOEffective Date: 1/29/2008

9.9. (M)

FARMINGTON MUNICIPAL SCHOOLS

"CUSTOMER"

Address: 2001 N. DASHIN AVE.
FARMINGTON, NM 87401

By: [Signature]Print Name: ROBERT R. EMERSONTitle: ASST. Supt. for CITDate: 1/29/2008

PRODUCT ADDENDUM

Product: WAN
No.: PD-0001985

Service Summary

Service: **Wide Area Network Services**
 Number of Sites: 12
 Contract Term In Years: 5
 Estimated E-Rate Discount: 72%

	Before E-Rate		After E-Rate	
	Month	Annual	Month	Annual
Installation Charge Per Site	\$0.00		\$0.00	
Total Service Charge - All Sites	\$18,828.00	\$225,936.00	\$5,271.84	\$63,262.08
Total Service Charge per Site	\$1,569.00	\$18,828.00	\$439.32	\$5,271.84
Customer Payments to Trillion	\$18,828.00	\$225,936.00		

* Does not include taxes or governmental fees, including but not limited to USF fees, sales taxes, etc., that Customer is also required to pay as listed on the invoice.

TRILLION PARTNERS, INC.**"TRILLION"**

9208 Waterford Centre Blvd., Suite 150
Austin, TX 78758

By: Print Name: TERRELL A. POTUTitle: PRESIDENT & CEOEffective Date: 1/29/2008**FARMINGTON MUNICIPAL SCHOOLS****"CUSTOMER"**Address: 2001 N. Durkin AveFarmington, NM 87401By: Robert R. EmersonPrint Name: Robert R. EmersonTitle: Asst. Supt. for CITDate: 1/29/2008

SS.

(M)